IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL WRIT PETITION NO.794 OF 2006

Betul Oils & Flours Limited : Petitioner

versus

M/s.Chandulal Rameshwardas

Exports Ltd. & ors. : Respondents.

Mr.Subhash Jha with Mr.Ghanshyam Upadhyay and Mr.Jimesh Shah i/by Law Global for the petitioner.

Mr.Micheal D'Souza for Respondent Nos.1 and 3.

Mr.V.B.Konde-Deshmukh, APP, for the State.

Mr.Khajotia h/f Mr.Girish Kulkarni for Respondent No.2.

CORAM : D.G.DESHPANDE

S.A.BOBDE, JJ.

DATED : JULY 13, 2006.

ORAL ORDER

1. Heard Mr.Jha for the petitioner, Mr.D'Souza for Respondent Nos. 1 and 3, Mr.Khajotia for Respondent No.2 and the learned APP for the State. Prayers in the petition are; for transferring C.C.No.618/SS/2005 from the Court of the Special Metropolitan Magistrate and Judge of Small Causes Court at Mumbai to any other court and; for quashing and setting aside the orders dated 28.11.2005 and 3.4.2006 with direction to the Magistrate to implement the order dated 14.10.2005 of this Court.

2. Copy of the order dated 3.4.2006 was made available to us during course of arguments and copy of the order dated 28.11.2005 is filed with this Petition at Exhibit K. This order (Exhibit K) will show that it was passed on the application filed by the complainant for recalling witness No.1. Ground raised was that advocate of the petitioner Mr.Zaa was busy in High Court when the matter was called out on 21.11.2005 and, therefore, could not attend that court. This contention of the

petitioner/complainant in the said application was contradicted by the accused in their reply application. The judge further observed that advocate Mr.Zaa is absent when the matter is called out today, the complainant is also absent, but later on the complainant appeared and at the request of complainant the matter was kept back for ten minutes. All the advocates for the accused was strongly opposed the application on the ground that the matter was pending for more than three years and, advocate Mr.Zaa had failed to appear before the Court in time. The judge also noted that advocate Mr.Zaa failed to appear before the Court in time on each and every occasion. But in the interest of justice, last chance was given subject to costs of Rs.5,000/-. The date was fixed. The matter was adjourned at 2.45 sharp to 3rd December 2005. It was clarified that if there is failure in compliance to the order, then matter would be proceeded as if that application.

3. Second order, which is under challenge, is dated 3.4.2006. It was an order on the application of the complainant for adjournment on the ground that the complainant now wish to

challenge the order passed in Transfer Application No.310 of 2005 by the Chief Metropolitan Magistrate, Mumbai. The court noted that order closing the evidence of the complainant was passed on 21.11.2005 and the matter was posted for final arguments on 28.11.2005. Sufficient opportunity was given to the complainant. On earlier occasion, the complainant obtained the adjournment by wrongly representing that the transfer application was pending, though there was no specific order by the Chief Metropolitan Magistrate. And, therefore, there was no ground for adjourning the matter when it was kept for final arguments. The order also shows that the parties were forewarned that the parties will have to proceed with the arguments and therefore in that background the judge rejected the application by order dated 3.4.2006.

4. Mr.Jha, appearing for the petitioner, apart from these two orders and other interim orders, tried to contend that, the complainant, according to him, is not likely to get justice from that Court. We are at all not in agreement with the submission made by Mr.Jha. The conduct

of the complainant through out before the lower Court shows that the complainant is seeking adjournments after adjournments for the purpose of prolonging the matter. Even the repeated absence of the advocate for the complainant had disturbed the proceedings before the trial Court. His prayer for transfer was rejected by the Chief Metropolitan Magistrate and, nothing was shown to us to the effect that the court, dealing with the matter, had prejudice against the complainant or his advocate. As such, the prayer for transfer is outright rejected.

5. So far as, other prayer for quashing the aforesaid two orders is concerned, that also does not require any interference. In both these impugned orders the court has given cogent and convincing reasons, firstly for imposing costs and secondly for rejecting the adjournment when the matter was fixed for arguments.

6. When the petition was came up before us, at the initial stage, the grievance of the respondents was that when payment of costs was a condition precedent and a fixed date for payment of costs was given, even then the costs were not

paid by the complainant. This attitude of the complainant was not, therefore, proper. He has no regard for the order of the court. Therefore, this Court enhances the costs from Rs.5,000/- to Rs.8,000/-.

7. We find from the conduct of the complainant, through out, that his only intention to delay and protract the litigation by taking objections and seeking adjournments without justification. Therefore, there is absolutely no merit in this case. Hence we pass the following order :-

ORDER

Writ Petition is dismissed with costs of Rs.10,000/- [Rupees Ten Thousand only].

Payment of costs is condition precedent otherwise the petitioner will not be permitted to take part in the proceedings before the Magistrate.

Costs to be paid to the accused or their advocate.

[D.G.DESHPANDE,J]

[S.A.BOBDE, J]